

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

|                    |   |           |
|--------------------|---|-----------|
| HOWARD SHMUCKLER,  | ) |           |
|                    | ) |           |
| Petitioner,        | ) |           |
|                    | ) |           |
| v.                 | ) | 1:14CV524 |
|                    | ) |           |
| STATE OF MARYLAND, | ) |           |
|                    | ) |           |
| Respondent.        | ) |           |

ORDER AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a federal prisoner housed in the Eastern District of North Carolina, submitted a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody, in which he attacks a conviction from the State of Maryland. For the following reasons, the Petition cannot be further processed.

1. The filing fee was not received, nor was an affidavit to proceed *in forma pauperis* submitted and signed by Petitioner.
2. Petitioner has not used the required § 2254 Forms. Rule 2, R. Gov. § 2254 Cases.
3. Petitioner does not name a proper respondent. Rule 2, Rules Governing Section 2254 Cases, requires that the petition name the state officer having custody of the applicant as respondent, or name both the officer who has current custody and the attorney general of the state where the judgment was entered if challenging future custody under a state court judgment.

Because of these pleading failures, the Petition should be filed and then dismissed, without prejudice to Petitioner filing a new petition on the proper habeas corpus forms

with the \$5.00 filing fee, or a completed application to proceed *in forma pauperis*, and otherwise correcting the defects noted.

In addition, the Court also notes that if Petitioner files a new petition correcting these defects, he should file the petition in a proper district. Under 28 U.S.C. § 2241(d), “[w]here an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him.” See also Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 497 (1973). In this case, it appears that Petitioner is presently in custody in the Eastern District of North Carolina, not this District. Moreover, he appears to be challenging a conviction and sentence from Maryland, within the territorial jurisdiction of the United States District Court for the District of Maryland, the only district in that state. The address for the Clerk of the District of Maryland is: 6500 Cherrywood Lane, Greenbelt, MD 20770.

*In forma pauperis* status will be granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS RECOMMENDED that this action be filed, but then dismissed *sua sponte* without prejudice to Petitioner filing a new petition in the correct district which corrects the defects of the current Petition.

This, the 7<sup>th</sup> day of January, 2015.

\_\_\_\_\_  
/s/ Joi Elizabeth Peake  
United States Magistrate Judge